

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs

By: Anne Marie Kelly  
Brian O. Lipman  
Deputy Attorneys General  
Tel.: (973) 648-4846

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: MERCER COUNTY  
DOCKET NO.: C-97-04

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PETER C. HARVEY, ATTORNEY GENERAL	:	
OF THE STATE OF NEW JERSEY and	:	
J. FRANK VESPA-PAPALEO, DIRECTOR	:	
OF THE NEW JERSEY DIVISION ON	:	
CIVIL RIGHTS,	:	
	:	
Plaintiffs,	:	AMENDED COMPLAINT
	:	
v.	:	
	:	
ANSCHUTZ CORPORATION	:	
d/b/a REGAL ENTERTAINMENT GROUP	:	
and/or REGAL CINEMAS, INC.,	:	
	:	
Defendant.	:	

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Plaintiffs, Peter C. Harvey, Attorney General of New Jersey, with offices located at Hughes Justice Complex, 25 W. Market Street, P.O. Box 080, Trenton, New Jersey, and J. Frank Vespa-Papaleo, Director of the New Jersey Division on Civil Rights, with offices located at 140 East Front Street, P.O. Box 089, Trenton, New Jersey, by way of Complaint say:

## JURISDICTION AND PARTIES

1. The Attorney General of the State of New Jersey ("Attorney General") is charged, among other things, with the responsibility of enforcing the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. ("LAD"), and all regulations promulgated thereunder, N.J.A.C. 13:13-1.1 et seq., and has the authority to bring this action pursuant to N.J.S.A. 10:5-13.

2. The Director of the New Jersey Division on Civil Rights ("Division") acts for the Attorney General, and with the Attorney General's power, in enforcing the LAD. N.J.S.A. 10:5-8(d). The Division is charged, among other things, with the responsibility of preventing any place of public accommodation from refusing, withholding from, or denying to any person protected by the LAD any of the accommodations, advantages, facilities or privileges thereof, or from discriminating against any such person in the furnishing thereof. N.J.S.A. 10:5-12(f)(1). The Director has the authority to bring this action pursuant to N.J.S.A. 10:5-13.

3. By this action, the Attorney General and the Director (collectively referred to as "Plaintiffs") seek equitable and injunctive relief, punitive damages, attorney's fees, and other relief for violations of the LAD.

4. Venue is proper in Mercer County, pursuant to R. 4:3-2(a) and R. 4:29-1.

5. Regal Entertainment Group and Regal Cinemas, Inc. ("Regal") are owned by the Anschutz Corporation, which also owns

the San Francisco Examiner, Edward's Theaters Circuit, Inc., and United Artists Theater Company. Regal has a principal place of business at 7132 Regal Lane, Knoxville, Tennessee 37918. As of June 1, 2003, it is the largest movie theater company in the United States, operating 6,124 screens at 563 sites. It, or its affiliates or subsidiaries, owns, operates and/or controls approximately 152 screens at twelve sites in New Jersey.

#### **BACKGROUND**

6. Being deaf, hard of hearing, blind or visually impaired are recognized disabilities under the LAD. N.J.S.A. 10:5-5(q),(w).

7. According to statistics analyzed by the New Jersey Department of Human Services, Division of the Deaf and Hard of Hearing, New Jersey's primary contact agency for information and referrals for individuals with hearing loss, of New Jersey's 8,052,000 residents, about 720,000, or approximately 8.9%, have some level of hearing loss.

8. According to the 2000 United States Census, there are 290,000 blind and visually impaired individuals in New Jersey. Of that figure, 243,000 are visually impaired, 39,000 are legally blind and 8,000 are totally blind.

9. The purpose of the LAD, among other things, is to prohibit any place of public accommodation directly or indirectly from refusing, withholding or denying to any disabled person any of the accommodations, advantages, facilities or privileges thereof.

N.J.S.A. 10:5-12(f)(1).

10. Defendant's movie theaters are "places of public accommodation," N.J.S.A. 10:5-5(1), and therefore must comply with the LAD's prohibition of discrimination against the deaf, hard of hearing and those individuals who are blind or visually impaired.

11. The regulations promulgated under the LAD require, inter alia, a place of public accommodation to make "reasonable modifications" to provide an accommodation to a person with a disability, unless the owner can show that such modifications would impose an undue burden on its operations. N.J.A.C. 13:13-4.11(a). The regulations also provide that a reasonable accommodation to a person who is deaf or has a hearing impediment includes but is not limited to the provision of auxiliary aids and services to ensure effective communication, such as closed caption decoders, and open and closed captioning. N.J.A.C. 13:13-4.12(a)(7). The regulations further provides that a reasonable accommodation to a person who is blind or has a vision impairment includes qualified readers, brailled materials and versions of books, books and materials on audio cassettes, and large print materials; and/or other specialized equipment or devices. Ibid.

12. Movies are a significant part of our nation's culture. Movie characters, scenes and dialogue constitute a major portion of our citizens' common experiences and infiltrate all parts of our State's collective culture. In media, at work, and in the home, discussion of, and references to, movies are prevalent and a basis

for dialogue, communications and understanding. Deaf, hard of hearing, blind and visually impaired persons who are unable to attend first-run movies are foreclosed from enjoying not only the movies themselves, but from sharing experiences and creating bonds with their family, friends and fellow citizens.

13. There are different technologies that can be utilized by people who are deaf or hard of hearing to access movies: open captioning and closed captioning.

14. Traditionally, open captioning requires the captioning to be burned on an individual reel of film. This is a labor intensive process, which takes place at least three weeks and often up to three to four months after the initial distribution of the film. Thus, the deaf and hard of hearing community must wait a long period after the release of a film to view it. Even when it is shown, it is usually screened only at occasional showings not during prime times (Friday and Saturday nights). Moreover, there are a limited number of reels of film upon which captioning is burnt; in some instances there may only be one captioned version of a particular film available for all New Jersey theaters.

15. Recently, a new type of open captioning has been made available to movie theaters, Open Caption Projection ("OCP"). This system requires a theater to install a second projector, which projects the captioning directly onto the film as it is showing. Unlike the older technology, the theater owner has the option to turn the Open Caption Projection on or off at individual

screenings. OCP-compatible films have their captions available from the very first showing of a film and for each and every showing of the film in OCP-equipped theaters.

16. Closed captioning displays the text only to patrons utilizing the equipment. With Rear Window Caption ("RWC"), a closed caption technology designed specifically for movie theaters, captions are recorded on a computer disc and played simultaneously with regular screenings of the movie. As the movie is displayed on the screen, the captions are sent to an LED data panel on the back wall of the theater and the text is reversed. Patrons then use panels at their seats to reflect the LED captions, allowing the captions to appear superimposed on or beneath the movie screen. The reflective panels are portable and adjustable, enabling patrons using RWC to sit almost anywhere in the theater.

17. There is a technology that can be utilized by people who are blind or visually impaired; the DVS Technical System ("DVS").

18. The DVS Technical System is a system, which delivers descriptive narration via infrared listening systems, enabling blind and visually-impaired moviegoers to hear the descriptions on headsets. The descriptions provide narrated information about key visual elements such as action settings, and scene changes, making movies more meaningful to people with vision loss.

19. The number of RWC, OCP and DVS compatible films that are released is significant and will continue to increase as more movie theaters install the technology. RWC and OCP compatible films

have their captions available from the very first showing of a film and for each and every showing of the film in RWC- or OCP-equipped theaters. DVS compatible films are available from the very first showing of a film and for each and every showing of the film in an DVS-equipped theater

20. At this time, to install OCP on a single screen would cost approximately \$12,500. This cost would likely be reduced if OCP equipment were purchased in bulk for installation in more than one theater.

21. At this time, to install RWC would cost approximately \$10,000 per screen This cost would probably be reduced if RWC equipment were purchased in bulk for installation in more than one theater.

22. At this time to install a DVS system would cost approximately \$2,000 per screen.

23. OCP (when used at all showings) RWC and DVS are reasonable accommodations under the LAD and do not impose an undue burden on Defendant, in that OCP, RWC or DVS are not excessively costly and would not in a fundamental alteration to the theater.

N.J.A.C. 13:13-4.11(b), 13:13-4.12(a)(7).

#### **COUNT ONE**

24. Despite the release of most movies shown in Defendant's theaters in formats compatible with the RWC and OCP systems, and despite the fact that such systems are neither excessively costly

nor would result in a fundamental alteration to the theaters, none of Regal's theaters located in New Jersey are equipped with either an RWC or OCP system.

25. On August 3, 2004, the Burlington Stadium 20 theater located at 250 Bromley Boulevard, Burlington, New Jersey, showed nineteen first-run films. Eleven of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

26. On August 10, 2004, the Burlington Stadium 20 theater identified in paragraph 25 showed seventeen newly released films. Ten of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

27. On August 3, 2004, the Cumberland Mall Stadium 14 theater located at 3849 S. Delsea, Vineland, New Jersey, showed fourteen newly released films. Ten of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

28. On August 10, 2004, the Cumberland Mall Stadium 14 theater, identified in paragraph 27 showed thirteen newly released films. Nine of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

29. On August 3, 2004, the Hadley Theater Stadium 16 located at 1000 Corporate Court, South Plainfield, New Jersey, showed thirteen newly released films. Nine of those films had RWC and OCP



capability which would have made them accessible to the deaf and hard of hearing community.

30. On August 10, 2004, the Hadley Theater Stadium 16, identified in paragraph 29 showed thirteen newly released films. Ten of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

31. On August 3, 2004, the UA Washington Township 14 theater located at 121 Tuckahoe Road, Sewell, New Jersey, showed nine newly released films. Six of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

32. On August 10, 2004, the UA Washington Township 14 theater identified in paragraph 31, showed ten newly released films. Six of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

33. On August 3, 2004, the Pohatcong 12 theater located at 1246 U.S. Highway 22, Phillipsburg, New Jersey, showed twelve newly released films. Eight of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

34. On August 10, 2004, the Pohatcong 12 theater identified in paragraph 33 showed eleven newly released films. Eight of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

35. On August 3, 2004, the Commerce Center Stadium 18 theater

located at 2399 Route 1 South, North Brunswick, New Jersey, showed seventeen newly released films. Ten of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

36. On August 10, 2004, the Commerce Center Stadium 18 theater identified in paragraph 35 showed fifteen newly released films. Ten of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

37. On August 3, 2004, the Movies @ Market Fair Stadium 10 Theater, located at 3521 Route 1, Princeton, New Jersey, showed ten newly released films. Six of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

38. On August 10, 2004, the Movies @ Market Fair Stadium 10 theater identified in paragraph 37 showed ten newly released films. Eight of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

39. On August 3, 2004, the Cross Keys Cinema Stadium 12 theater located at 151 American Boulevard, Turnersville, New Jersey, showed thirteen newly released films. Seven of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

40. On August 10, 2004, the Cross Keys Cinema Stadium 12 theater identified in paragraph 39 showed twelve newly released films. Six of those films had RWC and OCP capability, which would

have made them accessible to the deaf and hard of hearing community.

41. On August 3, 2004, the Marlboro Stadium 8 theater located at 12 Route 9 North, Morganville, New Jersey, showed ten newly released films. Six of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

42. On August 10, 2004, the Marlboro Stadium 8 theater identified in paragraph 41 showed eight newly released films. Seven of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

43. On August 3, 2004, the UA Moorestown Mall 7 theater located at 400 Route 38, Moorestown, New Jersey, showed eight newly released films. Seven of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

44. On August 10, 2004, the UA Moorestown Mall 7 theater identified in paragraph 43 showed eight newly released films. Seven of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

45. On August 3, 2004, the Hudson Mall 7 theater located at 725 St. Route 440, Jersey City, New Jersey, showed seven newly released films, five of those files had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

46. On August 10, 2004, the Hudson Mall 7 theater identified in paragraph 45 showed seven newly released films. Five of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

47. On August 3, 2004, the Hamilton Commons Stadium 14 theater located at 4215 Black Horse Pike, Mays Landing, New Jersey, showed fourteen newly released films. Nine of those films had RWC or OCP capability, which would have made them accessible to the deaf and hard of hearing community.

48. On August 10, 2004, the Hamilton Commons Stadium 14 theater identified in paragraph 47 showed thirteen newly released films. Ten of those films had RWC and OCP capability, which would have made them accessible to the deaf and hard of hearing community.

49. The only action taken by Defendant to enable in any manner deaf and hard-of-hearing patrons to enjoy movies shown at Defendant's theaters is the very limited, sporadic showing of a small number of films, which are not newly released and which are not shown during prime times, in the older open caption format described in paragraph 13 above.

50. Both in person and in writing, Plaintiffs have requested that Regal install either the OCP or RWC system at its theaters in New Jersey so that the deaf and hard of hearing may enjoy newly released films at the same time as non-deaf and hard of hearing patrons. Regal has advised that it is unwilling to install either

system.

51. By refusing to install either the OCP or RWC system in its movie theaters in New Jersey, and by otherwise not making its movies accessible to the deaf and hard of hearing, Defendant has violated the New Jersey Law Against Discrimination and its regulations, since installation of either one of these systems would enable the deaf and hard of hearing citizens of New Jersey to attend newly released movies and to share their experiences with their family, friends and fellow citizens.

**WHEREFORE**, the named Plaintiffs, on behalf of the deaf and hard of hearing citizens of New Jersey, respectfully request that this Court:

a) Enter a finding that Defendant has violated the Law Against Discrimination and its regulations because of its failure to install either the OCP or RWC system in its movie theaters in New Jersey or to otherwise make its movies accessible to the deaf and hard of hearing citizens of New Jersey;

b) Enter equitable and/or injunctive relief against Defendant, including, but not limited to, requiring Defendant to implement the captioning and other interpretive aids as described above;

c) Award counsel fees and costs pursuant to N.J.S.A. 10:5-27.1; and

d) Award any other relief this Court deems appropriate.

COUNT TWO

52. Plaintiffs repeat the allegations of the First Count as if fully restated herein.

53. On February 16, 2005, The Burlington Stadium 20 theater identified in paragraph 25 showed 18 newly released films. Five of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

54. On February 16, 2005, the Cumberland Mall Stadium 14 theater identified in paragraph 27 showed 14 newly released films. Six of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

55. On February 16, 2005, the Hadley Theater Stadium 16 identified in paragraph 29 showed 14 newly released films. Five of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

56. On February 16, 2005, the UA Washington Township 14 theater identified in paragraph 31 showed 12 newly released films. Five of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

57. On February 16, 2005, the Pohatcong 12 theater identified in paragraph 33 showed 12 newly released films. Five of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

58. On February 16, 2005, The Commerce Center Stadium 18 theater, identified in paragraph 35 showed 17 newly released films.

Five of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

59. On February 16, 2005, the UA Movies at Market Fair Stadium 10 theater, identified in paragraph 37 showed 11 newly released films. Four of those films had DVS capability which would have made them accessible to the blind and visually impaired community

60. On February 16, 2005, the Cross Keys Cinema Stadium 12, identified in paragraph 39, showed 13 newly released films. Five of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

61. On February 16, 2005, The Marlboro Stadium 8 theater, identified in paragraph 41 showed 9 newly released films. Four of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

62. On February 16, 2005, the UA Moorestown Mall 7 theater, identified in paragraph 43 showed 7 newly released films. Three of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

63. On February 16, 2005, the Hudson Mall 7 theater identified in paragraph 45 showed 6 newly released films. Two of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

64. On February 16, 2005, The Hamilton Commons Stadium 14 theater identified in paragraph 47 showed 14 newly released films. Six of those films had DVS capability which would have made them accessible to the blind and visually impaired community.

65. By not having installed the DVS system in its movie

theaters in New Jersey and by otherwise not making its movies accessible to the blind and visually impaired, Defendant has violated the New Jersey Law Against Discrimination and its regulations, since installation of this system would enable the blind and visually impaired citizens of New Jersey to attend newly released movies and to share their experiences with their family, friends and fellow citizens.

**WHEREFORE**, the named Plaintiffs, on behalf of the blind and visually impaired citizens of New Jersey, respectfully request that this Court:

a) Enter a finding that Defendant has violated the Law Against Discrimination and its regulations because of its failure to install the DVS system in its movie theaters in New Jersey or to otherwise make its movies accessible to the blind and visually impaired citizens of New Jersey;

b) Enter equitable and/or injunctive relief against Defendant, including, but not limited to, requiring Defendant to implement the DVS system as described above;

c) Award penalties pursuant to N.J.S.A. 10:6-1;

d) Award counsel fees and costs pursuant to N.J.S.A. 10:5-27.1; and



e) Award any other relief this Court deems appropriate.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: *Anne Marie Kelly*  
Anne Marie Kelly  
Deputy Attorney General

Dated: 2/22/05

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Anne Marie Kelly and Brian O. Lipman,  
Deputies Attorney General, are hereby designated as trial counsel  
on behalf of Plaintiffs.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: *Anne Marie Kelly*  
Anne Marie Kelly  
Deputy Attorney General

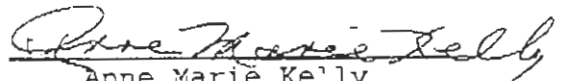
Dated: 2/22/05

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Law Against discrimination, N.J.S.A. 10:5-1 et seq. is not the subject of any other action pending in any other court of this State. I further that the matter in controversy in this action is not the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action.

**PETER C. HARVEY**  
**ATTORNEY GENERAL OF NEW JERSEY**  
Attorney for Plaintiffs

By:

  
Anne Marie Kelly  
Deputy Attorney General

Dated:

2/22/05